

1 APPEARANCES:

2 MR. RICHARD KABAKER and MS. GLORIA CAMARENA,
3 100 West Randolph Street, 6th Floor
4 Chicago, Illinois 60601
5 for IDOT;

6 MS. CINDY K. BUSHUR-HALLAM
7 Illinois Dept. Of Transportation
8 2300 South. Dirksen Parkway
9 Springfield, Illinois 62764
10 for IDOT;

11 MR. STEPHAN G. JEFFERY
12 One U.S. Bank Plaza, Suite 2600
13 St. Louis, Missouri 63101
14 for Kansas City Southern;

15 MR. MACK SHUMATE
16 101 North Wacker Drive, Suite 1920
17 Chicago, Illinois 60606
18 for Union Pacific Railroad;

19 MR. JOSEPH VONDEBUR
20 527 East Capitol Avenue
21 Springfield, Illinois
22 for ICC staff;

23 MR. GLENNON FOGARTY
24 190 Carondelet Plaza, Suite 600
25 St. Louis, Missouri 63105
26 for MCI Communications Services, Inc.

27 SULLIVAN REPORTING COMPANY, by
28 Francisco E. Castañeda, CSR,
29 License No. 084-004235

30

31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- direct</u>	<u>Re- cross</u>	<u>By Examiner</u>
Mr. William Fleece	16	33 40			

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
KCS Exhibit No. 12		26

1 ADMINISTRATIVE LAW JUDGE JACKSON: Pursuant to
2 the authority vested in me, I call Docket
3 No. T09-0018 to hearing. Petition filed by the
4 Illinois Department of Transportation that involves
5 KCS Railroad, Union Pacific Railroad and IDOT.

6 Appearance please. Let's start with
7 everyone from IDOT.

8 MR. KABAKER: Richard Kabaker, deputy chief
9 counsel, IDOT here in Chicago at 100 West Randolph
10 Street, 6th Floor. Just moved yesterday -- or two
11 days ago.

12 MS. CAMARENA: Gloria Camarena, IDOT, chief
13 counsel's office. Same thing, 100 West Randolph.

14 ADMINISTRATIVE LAW JUDGE JACKSON: Thank you.

15 Mr. Kabaker, do you know your phone
16 number?

17 MR. KABAKER: My phone -- yeah. My phone
18 number is the same as it was. So it's
19 (312) 793-4838.

20 MS. CAMARENA: And mine is (312) 793-2965.

21 ADMINISTRATIVE LAW JUDGE JACKSON: All right.
22 And I believe we have a couple people from IDOT down

1 here in Springfield; correct?

2 MS. BUSHUR-HALLAM: Correct.

3 ADMINISTRATIVE LAW JUDGE JACKSON: Why don't

4 you give us your name for the record.

5 MS. BUSHUR-HALLAM: Cindy Bushur-Hallam and I'm

6 with the office of chief counsel.

7 ADMINISTRATIVE LAW JUDGE JACKSON: Want to

8 spell your last name for the court reporter.

9 MS. BUSHUR-HALLAM: B-u-s-h-u-r, hyphen,

10 H-a-l-l-a-m.

11 ADMINISTRATIVE LAW JUDGE JACKSON: That's good.

12 Thank you.

13 Any more lawyers from IDOT?

14 MR. KABAHER: No. Three is enough.

15 ADMINISTRATIVE LAW JUDGE JACKSON: I think so,

16 too. This is not good.

17 Kansas City Southern, please.

18 MR. JEFFREY: Steve Jeffery, J-e-f-f-e-r-y,

19 Thompson Coburn, One U.S. Bank Plaza, St. Louis,

20 Missouri 63101. Telephone number, area code

21 (314) 552-6229.

22 ADMINISTRATIVE LAW JUDGE JACKSON: All right.

1 Union Pacific Railroad.

2 MR. SHUMATE: My name is Mack Shumate. I'm an
3 attorney with the Union Pacific Railroad. Our
4 address is at 101 North Wacker Drive, Suite 1920,
5 Chicago, Illinois 60606. Telephone number is area
6 code (312) 777-2055.

7 ADMINISTRATIVE LAW JUDGE JACKSON: Thank you.

8 Staff. Mr. VonDeBur.

9 MR. VONDEBUR: Joe VonDeBur, Illinois Commerce
10 Commission, 527 East Capitol Avenue, Springfield,
11 Illinois (217) 557-1286.

12 ADMINISTRATIVE LAW JUDGE JACKSON: And I
13 believe we have someone new with us today. Go for
14 it.

15 MR. FOGARTY: Good afternoon. My name is
16 Glennon Fogarty. I'm an attorney with the law firm
17 of Husch, Blackwell, Sanders. I'm here on behalf of
18 MCI Communications Services, Inc.

19 It's Glennon, G-l-e-n-n-o-n, Fogarty,
20 F-o-g-a-r-t-y. I am officed in the St. Louis office
21 at 190 Carondelet Plaza, Suite 600, St. Louis, Mo.,
22 63105. And my direct dial is (314) 480-1505.

1 I have a formal entry of appearance if
2 the clerk or the hearing officers want to review that
3 for the motion to intervene to participate in today's
4 proceeding. As I understand it, the railroad is
5 quite welcome to our appearance and did not object to
6 that. And I presume IDOT is the same but I probably
7 should confirm that for the record.

8 ADMINISTRATIVE LAW JUDGE JACKSON: All right.
9 Court reporter, I will take care of the exhibits.

10 Let me ask this, are there any
11 objections to Mr. Fogarty and MCI being in the case
12 as an intervenor?

13 MR. KABAKER: No. IDOT has no objection.

14 ADMINISTRATIVE LAW JUDGE JACKSON: Good.

15 MR. JEFFERY: KCS has no objection.

16 MR. SHUMATE: Union Pacific has no objection.

17 ADMINISTRATIVE LAW JUDGE JACKSON: Good.

18 MR. VONDEBUR: Commission staff has no
19 objections.

20 ADMINISTRATIVE LAW JUDGE JACKSON: It's
21 unanimous. You're in. It might be a good thing,
22 might not.

1 We were last together April 7th of
2 this year. There were -- and that was the second
3 time, I believe, we had gotten together in the case.
4 There were a lot of outstanding issues at the last
5 hearing on April 7. It seemed that a number of them
6 have been taken care of.

7 I was hopeful to walk in here this
8 afternoon and just have somebody hand me a draft
9 agreed order. There is -- we have time constraints
10 in this case because of certain funding. I don't
11 need to go through the details. IDOT has already
12 made us aware of them.

13 Where are we? Mr. Kabaker, should I
14 ask you or should I ask Mr. Jeffery? Or who wants to
15 talk.

16 MR. KABAKER: I think, Cindy, if you can update
17 the Court on where we are. I think you're probably
18 in the best position to do that.

19 MS. BUSHUR-HALLAM: Okay. And my apologies if
20 I'm not as up to date on procedure. But with your
21 permission, I would like to have our utility support
22 engineer just give an update as to the meetings that

1 have occurred.

2 ADMINISTRATIVE LAW JUDGE JACKSON: Okay. And

3 who is that?

4 MS. BUSHUR-HALLAM: Kirk Brown.

5 ADMINISTRATIVE LAW JUDGE JACKSON: State your

6 name for the record.

7 MR. KIRK BROWN: Kirk Brown, K-i-r-k B-r-o-w-n.

8 ADMINISTRATIVE LAW JUDGE JACKSON: I forget.

9 Mr. Brown, have we sworn you in the first time?

10 MR. KIRK BROWN: At the first hearing, yes.

11 ADMINISTRATIVE LAW JUDGE JACKSON: Why don't we

12 consider Mr. Brown to be duly sworn.

13 You do swear to tell the truth, the

14 whole truth, and nothing but the truth so help you

15 God?

16 MR. KIRK BROWN: Yes.

17 ADMINISTRATIVE LAW JUDGE JACKSON: All right.

18 Any objections to Mr. Brown just speaking in essay

19 form rather than questioning?

20 Mr. Jeffery.

21 MR. JEFFERY: KCS has no objection.

22 ADMINISTRATIVE LAW JUDGE JACKSON: Anybody?

1 MR. SHUMATE: Union Pacific, no objection.

2 MR. VONDEBUR: Staff, no objection.

3 MR. FOGARTY: MCI has no objection.

4 ADMINISTRATIVE LAW JUDGE JACKSON: Good.

5 MR. KIRK BROWN: All right. Since our last
6 meeting at the hearing, KCS did request a meeting at
7 the IDOT facilities on April 16th. We did hold that
8 meeting, which seemed very productive.

9 We had KCS present, Union Pacific
10 representatives present, Verizon Wireless was also
11 present, and our designers. And that was all in an
12 effort to establish whether the MCI line was, in
13 fact, in the way of our project.

14 The Department of Transportation did
15 provide KCS a response to their previous request, and
16 that response included the fact that, yes, we could
17 and would accommodate a future -- space for our
18 future track under the westernmost span of both
19 bridges.

20 However, we felt that the -- that KCS
21 would like to consider -- would have to bear those
22 costs. We met, as I said, in Collinsville and it

1 seemed that we weren't moving forward on that. We
2 agreed to potholes at the MCI line, which was just
3 completed this week, and also the other Sprint line,
4 also in that vicinity.

5 Since then, the Department believes
6 that the MCI line does not factor in our bridge and
7 that the pier in question can be constructed without
8 relocation in any form of the MCI line.

9 ADMINISTRATIVE LAW JUDGE JACKSON: So,
10 initially, you were looking for KCS to pay the cost
11 of the movement of whatever fiberoptics there are,
12 but now you are not?

13 MR. KIRK BROWN: Well, originally, we were not
14 asking KCS to pay for the costs. We normally would
15 handle these as separate issues. Utilities would be
16 completely from railroad. We have had an agreement
17 with MCI that would not have involved KCS at all.

18 When KCS raised that issue, they
19 essentially asked that if the fiberoptic line were so
20 close that it required a movement, which our estimate
21 had indicated could have been well over \$500,000. If
22 they would be more lenient on their requirements on

1 how close the line can be to the track thereby
2 granting us a benefit, that they ask that we pay for
3 the cost to have them redesign the slope wall and
4 change that to a retaining.

5 ADMINISTRATIVE LAW JUDGE JACKSON: But that's
6 no longer an issue?

7 MR. KIRK BROWN: It is not.

8 ADMINISTRATIVE LAW JUDGE JACKSON: Mr. Jeffery,
9 what do you have to say about that?

10 MR. JEFFERY: KCS, we will acknowledge the fact
11 that we had the meeting and I think all the parties
12 would agree that it was a productive meeting; and
13 that the potholing did occur I think this Monday and
14 Tuesday.

15 I have a witness available if we need
16 to, you know, have some testimony on the record, what
17 that consisted of, what the outcomes were. And he
18 did prepare a drawing showing the locations. So it
19 probably would be a good idea to get some testimony
20 and get this document authenticated and admitted as
21 an exhibit.

22 But we believe his testimony of

1 Mr. Fleece, who has previously testified in this
2 matter as well, will show that the -- with respect to
3 the southern proposed pier, the MCI cable is located
4 approximately 22 inches from that.

5 And that although IDOT feels that's
6 well within an acceptable zone of tolerance, we
7 believe the Illinois General Assembly has addressed
8 this issue by statute establishing at a minimum at
9 least a 3 and a half -- or 3- to 4-and-a-half-foot
10 tolerance zone for fiberoptic cables.

11 And, therefore, since the Illinois
12 General Assembly has determined what's an acceptable
13 tolerance zone, and 22 inches is definitely not
14 within that tolerance zone, we believe that IDOT is
15 incorrect.

16 ADMINISTRATIVE LAW JUDGE JACKSON: Well, let me
17 ask you this: Do you have the authority with you,
18 the statute?

19 You say the Illinois General Assembly
20 has --

21 MR. JEFFERY: Yeah.

22 ADMINISTRATIVE LAW JUDGE JACKSON: -- spoken to

1 it.

2 Do you have that with you?

3 MR. JEFFERY: Yes. We have a copy. We would
4 ask you to take administrative notice of that at the
5 appropriate time.

6 ADMINISTRATIVE LAW JUDGE JACKSON: Well, of
7 course, I would.

8 Then I'm going to want IDOT's response
9 to that at some point; if not, today.

10 MS. BUSHUR-HALLAM: It would not be today.

11 ADMINISTRATIVE LAW JUDGE JACKSON: Okay. Let's
12 let Mr. Jeffery put his witness on. All right?

13 And now MCI. Mr. Fogarty, do you have
14 anything to add before we jump into testimony?

15 MR. FOGARTY: Yes. Thank you, your Honor. One
16 question we would have is that Mr. Brown gave a
17 general overview.

18 The last plan that we had seen
19 actually had, as I understand it, construction being
20 on top of the cable. And so if there are details
21 about how IDOT is planning on changing its plan, that
22 would be informative. Because our first

1 participation in a formal way was at that meeting,
2 which would be two weeks ago tomorrow. The potholing
3 was only completed yesterday afternoon, and we
4 haven't receive a revised plan or agenda on how to
5 avoid impacting the MCI cable adversely.

6 And so I'm not sure -- I'm not sure
7 the details have been put forward by IDOT to know
8 what their plan is to avoid cutting the wire.

9 ADMINISTRATIVE LAW JUDGE JACKSON: Well, let's
10 just throw a paragraph in that agreement, Mr. Brown,
11 that IDOT agrees to accept all responsibility in case
12 that cable is cut and pay for it.

13 Let's have some testimony.

14 Mr. Jeffery, you have the floor.

15 MR. JEFFERY: Thank you, your Honor. KCS will
16 call William Fleece.

17 MR. WILLIAM FLEECE: My name is William Fleece.
18 I'm of the company by the name of Design Nine,
19 Incorporated.

20 ADMINISTRATIVE LAW JUDGE JACKSON: Let me
21 remind you, Mr. Fleece, that you are still under
22 oath. Okay?

1 THE WITNESS: Yes, sir.

2 Our address is 11166 Tesson Ferry

3 Road, Suite 100, St. Louis, Missouri 63123. Phone

4 (314) 729-7600.

5 (Witness previously sworn.)

6 WILLIAM FLEECE,

7 called as a witness herein, having been first duly

8 sworn, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY

11 MR. JEFFERY:

12 Q Mr. Fleece, are you familiar with the

13 proposed Route 255 overpass project that is the

14 subject matter of this hearing?

15 A Yes, I am.

16 Q Had you testified before in this proceeding

17 a couple of times?

18 A Yes, I did.

19 Q Did you have occasion to be a participant

20 at a site visit earlier this week?

21 A Yes. I was requested by the Kansas City

22 Southern to attend an on-site -- the underground

1 utility to investigate at the site of the 255
2 overpass piers located west of the KCS tracks?

3 Q When did this on-site meeting take place?

4 A It was Monday and Tuesday of this week.

5 Q Did you attend both days?

6 A I was there Monday all day, partial day on
7 Tuesday. I had to leave because of prior commitment,
8 but another representative of my office was there.

9 Q Do you recall who all attended the -- was
10 present at the site when you were?

11 A Stacy Wolfe of Oates Associates; MCI,
12 slash, Verizon representatives, service technicians,
13 field technicians. I don't have their exact names.
14 A sprint representative, a firm by the name of
15 Geo-Technology who did the potholing via a vacuum
16 truck. And I believe it's ADB Utility Contractors
17 out of Dallas, Texas who did the open excavations to
18 expose the MCI/Verizon line. In addition, there was
19 a railroad flagman there for the Kansas City
20 Southern. That's the gist of who was there.

21 Q Thank you.

22 You used the term potholing. For the

1 record, can you describe what potholing consisted of
2 and what activities you observed that day?

3 A Well, in the case of Geo-Technology, they
4 had a vacuum truck. A vacuum truck exerts
5 pressurized water vertically downward into the ground
6 and right next to it is a vacuum as the soil is
7 dislodged.

8 The soil is vacuumed up and taken to a
9 container. That allowed them to work their way down
10 to the exact location of the Sprint line. That was
11 what Geo-Technology did. That's potholing.

12 Q Okay. What was done with respect to the
13 MCI/Verizon cable?

14 A ADB Utility had a small case backhoe that
15 the -- track mounted that would allow them to
16 excavate. The line was previously marked in orange
17 by the MCI/Verizon technicians.

18 And at that point, they carefully
19 excavated down with a small backhoe. But most of the
20 work was done by hand to prevent any damage until
21 they reached the exact fiber location. They
22 physically exposed a shovel width of it. And it was

1 enclosed in an inch and a quarter inch high-density
2 polyethylene casing pipe.

3 They physically exposed the line at
4 numerous locations, eight to ten locations, so they
5 could -- so that Oates Associates could come back at
6 a later date and GPS the exact coordinates of the
7 line.

8 They did not do the exact location
9 that day of the Sprint line -- I'm sorry, the MCI
10 line. They vertically left the 2-inch PVC conduit
11 rising up out of the ground, painted orange, so the
12 GPS survey rod could be dropped back down into that
13 hole at a later date to exactly pinpoint that
14 location.

15 Q So would it be fair to say these PVC risers
16 sits directly on top of the MCI cable?

17 A I believe it was set just to one side or
18 the other. And I do not recall which side they set
19 it to. They didn't want to put it exactly on top of
20 it because someone can come along and punch that down
21 and potentially damage the line.

22 So I believe it was set -- I don't

1 know exactly, but I believe it was set to the west of
2 the line. So you're talking 2 inches directly next
3 to it. They then backfilled the holes to restore the
4 railroads back to its original condition.

5 Q You indicated that this trenching on the
6 MCI cable occurred at approximately seven or eight
7 different locations?

8 A Yes. Eight to ten.

9 Q Eight to ten.

10 What was the linear distance of one of
11 those trenching holes on the average?

12 A Oh, for each hole?

13 Q Yes.

14 A Oh. 6 feet, 6 to 7 feet.

15 Q At each location?

16 A Just enough for a man to get in the hole,
17 do the excavating by shovel, hand, very carefully. 6
18 to 7, 8 feet. I didn't measure it exactly, but it
19 was something in that order.

20 Q In terms of total linear distance,
21 approximately what was the linear footage of the
22 excavation?

1 A Well, there was -- there were locations
2 they did that new drainage structures are going in.
3 They wanted to know where the fiber was at those
4 locations. That extended the limits substantially
5 just where the piers are and -- I mean, totally, 300
6 foot. They were working within a 300-foot area. My
7 best guess.

8 Q Were the footprints of the piers marked?

9 A Corners of piers were identified by a
10 wooden stake, yes.

11 Q Who placed the wooden stakes there, do you
12 know?

13 A I have no idea who put those there. They
14 were there when I showed up.

15 Q Did you have occasion to take any
16 measurements that day?

17 A Yes, I did.

18 Q What did you measure?

19 A I measured the distance from the center
20 line of the KCS track to the vertical risers left in
21 the ground, and then from the vertical riser left in
22 the ground to the corners of those piers.

1 Keep in mind, those were not exactly
2 at the corners of the piers. They were reasonably
3 close. That's why my distances -- and I'm sure
4 you're going to refer to the exhibit -- are plus or
5 minus. And plus or minus is just that, you know, it
6 was measured and taped.

7 I might have had a fiberoptic riser
8 here, and this might have been the corner of the
9 pier. It wasn't exactly in line, so I had to make
10 another measurement and eyeball the corner. That's
11 why the plus or minus.

12 Q Did you also have occasion to prepare a
13 drawing of your measurements on general observations
14 that day?

15 A Not that day. I had -- from my notes, I
16 prepared that exhibit early this morning.

17 Q Do you have some extra copies of that?

18 A Yes, I do.

19 Q If you could, take one copy of that in the
20 lower --

21 A I have my original.

22 Q One of the copies on the lower right-hand

1 corner --

2 A Lower right-hand corner?

3 Q Yes. If you could label that KCS --

4 ADMINISTRATIVE LAW JUDGE JACKSON: Just label

5 the original that's going to be filed. I mean, let

6 him mark on the original that's going to be filed.

7 THE WITNESS: Well, this got some pencil

8 markings on it.

9 MR. JEFFERY: We're just going to file a copy

10 as the actual exhibit.

11 ADMINISTRATIVE LAW JUDGE JACKSON: Okay. Are

12 we doing colors like we did last time, red and blue?

13 MR. JEFFERY: No.

14 THE WITNESS: Just my pencil one, I never want

15 to submit that because something can be changed in

16 pencil. But this is a copy of that. I'd like to

17 make this the original.

18 BY MR. JEFFERY:

19 Q In the lower right-hand corner, could you

20 label that KCS --

21 A KCS.

22 Q -- Exhibit --

1 A -- Exhibit --

2 MR. JEFFERY: Do you have the order of the next

3 exhibit? I think it might be 10 or 11.

4 ADMINISTRATIVE LAW JUDGE JACKSON: 12 will be

5 the next.

6 BY MR. JEFFERY:

7 Q KCS Exhibit 12.

8 A Anything else after that?

9 Q No.

10 MR. SHUMATE: Is it possible to put that on a

11 projector to look at it?

12 ADMINISTRATIVE LAW JUDGE JACKSON: No.

13 MR. SHUMATE: Okay.

14 ADMINISTRATIVE LAW JUDGE JACKSON: Sorry.

15 THE WITNESS: Do you want me to hold it up for

16 them?

17 ADMINISTRATIVE LAW JUDGE JACKSON: Yeah.

18 There's the camera.

19 I mean, we do but we don't.

20 MR. SHUMATE: A little higher and we can see

21 it. Just for a minute.

22 THE WITNESS: Sorry.

1 ADMINISTRATIVE LAW JUDGE JACKSON: I'll tell
2 you what -- off the record.

3 (Whereupon, a discussion
4 was had off the record.)

5 ADMINISTRATIVE LAW JUDGE JACKSON: You may
6 proceed.

7 BY MR. JEFFERY:

8 Q Do you have a copy of KCS Exhibit 12?

9 A Yes, I do.

10 Q Mr. Fleece, when did you prepare that?

11 A This morning.

12 Q Is that a fair and accurate representation
13 based on your drawings of what you observed in the
14 field earlier this week?

15 A Based on my tape measurements, yes.

16 But I must add, you are not dealing
17 with exact perpendicular measurements when you
18 measure from the track that's sitting up 2 or 3 foot
19 above this mark. It's a tape measurement.

20 Is that exactly where everything is
21 at? No, that would be based on a GPS survey and
22 we're all in the coordinate system. That's what I

1 wanted to add about this drawing. This is a sketch
2 of the measurement I made based on the fieldwork that
3 was performed this week.

4 MR. FOGARTY: At this time, we off KCS Exhibit
5 No. 12.

6 ADMINISTRATIVE LAW JUDGE JACKSON: Any
7 objections?

8 Hearing none, it will be admitted.

9 (Whereupon, KCS Exhibit No. 12
10 was admitted into evidence.)

11 MR. JEFFERY: I have some additional questions
12 for the witness as well.

13 BY MR. JEFFERY:

14 Q Mr. Fleece, directing your attention to the
15 construction plans of drawings for this proposed
16 project. Have you had occasion to review those from
17 time to time?

18 A The initial review I had performed prior to
19 the January 7th meeting.

20 Q Is it your understanding, has Design Nine
21 and KCS been provided copies of all construction
22 plans and drawings that they have requested from

1 IDOT?

2 A I am still awaiting the complete set of the
3 revised plans.

4 Q When you say a complete set of the revised
5 plans, can you describe that for the record what it
6 is you're waiting to receive?

7 A Well, normally, with a set of overpass
8 plans, there's additional information concerning the
9 construction of the roadbed adjacent to the track
10 and/or hydraulic information.

11 In my initial review, I asked for a
12 complete hydraulic and hydrology study to be provided
13 for review to ensure the adequacy of the two new
14 drainage pipes anticipated to be placed under the
15 three tracks.

16 Q When did you ask for that?

17 A That was in my initial e-mail review prior
18 to the January 7th meeting. I believe it was
19 December 29th, if I'm not mistaken.

20 Q Of what year?

21 A Of '08.

22 Q 2008?

1 A I recall it at that. It was prior to the
2 January 7th meeting.

3 ADMINISTRATIVE LAW JUDGE JACKSON: That was
4 2009, was it not?

5 THE WITNESS: 2008.

6 ADMINISTRATIVE LAW JUDGE JACKSON: Okay.

7 THE WITNESS: At that point, there was an
8 e-mail review because I provided to KCS who provided
9 it to IDOT.

10 Since that time, I'm awaiting the
11 information on the hydraulic study, as I said, and a
12 complete revised set of plans. Because there was
13 numerous items raised at that January 7th meeting
14 that we were informed would be addressed in the final
15 set of plans.

16 BY MR. JEFFERY:

17 Q That was in response to the list of
18 approximate 20 items that KCS --

19 A 15 to 20 items. Something like that.

20 Q That was the meeting held at IDOT
21 headquarters?

22 A Yes, sir.

1 Q Headquarters in Collinsville?

2 A Yes, it was.

3 Q A couple other questions. Again, this gets

4 back to being out in the field on Monday and Tuesday.

5 Are there -- based on your

6 understanding, is there some current discussion about

7 the location of two underground structures, concrete

8 piping to be -- that goes underneath the railroad

9 right-of-way, the tracks, some drainage structures?

10 A Undergoing discussions with whom?

11 Q That were discussed at the field.

12 A No. This was -- that was not discussed in

13 the field, no.

14 Q Is there an outstanding issue concerning

15 those structures?

16 A Well, since my review prior to the

17 January 7th meeting, I have shared with the Kansas

18 City Southern my concern for the installation of

19 reinforced concrete pipe under active tracks.

20 Q What is the basis of your concern?

21 A From my experience with Class 1 railroads,

22 as long as they have no trouble -- I'm sorry. I do

1 not object to the use of reinforced concrete pipes.
2 However, there's an issue of restraining the --
3 keeping the sections of pipe attached to one another
4 so that they do not separate underneath the track.

5 Q In lieu of that composition material, is
6 there something else that works better for a Class 1
7 railroad?

8 A Well, there's no objection to reinforced
9 concrete pipe as long as it's Class 5 and as long as
10 the connections are addressed as to their integrity.

11 Because -- if you're familiar with
12 concrete pipe, it comes in like 8-foot sections, 6-
13 to 8-foot sections, I believe. And they're forced
14 together, a female and male end. Okay?

15 And there are methods of ensuring
16 those connections stay put. You can completely
17 capsule the adjoining concrete. You can have
18 mechanical connections to the pipe, et cetera.

19 Now, that's compared to a corrugated
20 metal pipe, which is -- has a minimal number of
21 joints. Okay? But I'm not aware that you can
22 jack -- bore and jack corrugated metal pipe under a

1 railroad track.

2 Q When you say bore and jack, what do you
3 refer to?

4 A Well, the tracks remain in place and bore a
5 hole and shove a pipe under them and then you just
6 keep running track all day long.

7 So the issue that I raised just
8 recently, in all honesty, is something that came to
9 me out in the field looking at these pipes -- or
10 looking at the plans for these pipes, my question
11 was, Is the KCS going to accept -- and the Union
12 Pacific for that matter -- a bored in jack reinforced
13 concrete pipe under their tracks without mechanical
14 restraints at the joints? So that was just a new
15 issue that I raised with KCS this weeks.

16 There was another issue with an
17 existing drainage pipe. I missed on my initial
18 review of the plans that the south overpass structure
19 west footing, directly adjacent to the track, KCS
20 track, is over the top of an existing pipe.

21 I missed on the plans that it was
22 there. But I saw it in the field when we were doing

1 these borings and such. And I subsequently went back
2 to the plans and saw where that pipe is to be filled
3 and grouted and bolted. Which because if you start
4 driving each pylon to support a footing, you're going
5 to -- you could punch right through that pipe.

6 But if it's going grouted full, that's
7 a concern of the railroad's. Abandoned structures
8 under railroads are normally grouted full with a lean
9 concrete mix. So that -- it fills the molding, so to
10 speak. That was a concern that -- the plans clearly
11 say it's going to be filled and grouted.

12 Q Could you have other concerns if you're
13 provided with a final set of plans and drawings?

14 A Well, you always -- the potential exists in
15 a final review that I could potentially miss in first
16 go around that could be uncovered in the final plans.
17 Yes.

18 MR. JEFFERY: I have no other questions.

19 ADMINISTRATIVE LAW JUDGE JACKSON: Mr. Fogarty,
20 do you have any questions for the witness?

21 MR. FOGARTY: I do.

22 ADMINISTRATIVE LAW JUDGE JACKSON: Okay.

1 CROSS-EXAMINATION

2 BY

3 MR. FOGARTY:

4 Q Sir, in regards to Kansas City Southern 12,
5 does that exhibit show the location of the drainage
6 pipes that you were discussing earlier?

7 A No, it does not.

8 Q You indicated that a GPS survey would be a
9 more accurate depiction of the location; is that
10 correct?

11 A Yes, it would.

12 Q Was IDOT or anyone else taking a GPS
13 survey?

14 A The Geo-Technology line that was
15 uncovered -- I'm sorry. The Sprint line that was
16 potholed -- and that's the one that lies to the west
17 of the upper left-hand corner of that drawing. In
18 the locations that Geo-Technology potholed, they had
19 a surveying firm -- I believe it was EDSI -- on site
20 pinging in those locations -- locating those spots.

21 The MCI/Verizon line was not GPSed
22 that day, either Monday or Tuesday. It was my

1 understanding Oates Associates was to perform that
2 survey on some later date.

3 The only reason I say -- or more
4 accurate is, when you stake the center line -- the
5 corner of a pier, it wasn't like they set a rebar
6 with a cap on top of it. They set a wood lath in the
7 ground. Okay? And then for what -- maybe for this
8 investigation, that's accurate enough.

9 But GPS coordinates, I'm sure the
10 bridge plans know exact coordinates for the corner of
11 that pier. And then if you do the exact location of
12 the fiberoptic line opposite those corners, you could
13 determine what your clearances are. Or horizontal,
14 true horizontal distances are.

15 Keep in mind, it's a sloped ground out
16 there, ballast material, soft soil. That's why those
17 measurements, as I said, are plus or minus.

18 Q So you understand that there has not been
19 GPS measurements taken of the MCI line as of today's
20 date; is that correct?

21 A I'm not -- I haven't been provided any
22 information that they have, but I can't say if they

1 have or have not.

2 Q You don't have any information that IDOT or
3 anyone has taken GPS measurements; is that correct?

4 A I have not gotten any information that
5 shows the GPS measurements have been taken as of
6 today.

7 Q Has any IDOT representatives communicated
8 to you the location of the temporary sheet piling at
9 the footing footprint of the near track pier
10 southwest structure?

11 A Repeat that again.

12 Q Looking at Exhibit 12, which shows the
13 footing footprint for the southwest structure --

14 A Yes, sir.

15 Q -- and is it your understanding that there
16 will be temporary sheet piling between that structure
17 and the MCI cable?

18 A Well, from a railroad standpoint, I would
19 say that there's going to be shoring between that
20 footing and the KCS track to protect KCS's
21 operations.

22 Q And do you know where the location of that

1 temporary sheet piling will be or the shoring will
2 be?

3 A The current plans show it at 12 feet. I
4 believe.

5 Q And 12 feet from where?

6 A The center line of the KCS track.

7 Q Okay. And what's the width of that
8 temporary sheet piling?

9 A I don't know what size sheets they intend
10 to use. I can't answer that.

11 Q And when you say 12 feet from the center
12 line of the KCS rail line, where would that place
13 that sheet piling relative to any of the cable lines
14 depicted on your exhibit?

15 A Starting at the left-hand side of this
16 exhibit, if the shoring was placed 12 foot from
17 center line of track, it would place it before you
18 reached the fiberoptic line.

19 Q Okay.

20 A Going to the next corner of that south-most
21 structure footing, if sheet pile shoring was placed
22 opposite that corner, it would be on the other side

1 of the fiberoptic -- MCI fiberoptic line.

2 And, likewise, it would be a 12 foot
3 across the entire face -- I'm sorry. The entire east
4 face of that pier footing; so that it would intersect
5 the fiber line.

6 Q So based upon the most current design
7 drawings that you had seen, it's your testimony that
8 the temporary sheet piling as currently designed
9 would cut across the MCI cable; is that correct?

10 A If the 3.26 meters shown on the plans that
11 I reviewed, I believe that ran at 12 feet. So, yes,
12 it would.

13 Q And do you have an understanding about the
14 approximate width of the temporary sheeting?

15 A I'm sorry. I'm going to correct that.

16 They're showing -- okay. They're
17 showing the minimum distance for shoring the center
18 line of KCS track 3.66 meters.

19 Q Okay.

20 A 3.66 meters -- I don't have my calculator,
21 but I believe that's roughly 12 foot.

22 Q Thank you.

1 Do you have a general understanding of
2 the approximate width of the sheeting?

3 A Width in relationship perpendicular to the
4 KCS track? Is that what you mean by width?

5 Q Width as in you were indicating that it was
6 approximately 12 feet from the center line of the KCS
7 rail; correct?

8 A Location, yes, sir.

9 Q And then would this sheeting be, say, a
10 foot?

11 A It has a depth to it, depending on the size
12 of the sheets. Here, again, I don't know -- I mean,
13 my best estimate is 6 to 8 inches. It could be less.
14 It could be more.

15 Because sheeting is -- it's in a Z
16 pattern. It's corrugated. Okay? And it's -- and
17 they're angled. It's not a straight line -- I mean,
18 it's not a straight edge like this. It has angles to
19 it for strength.

20 Q Okay. And just trying to make the record
21 clear, the distance of the sheeting and the current
22 designs, that would be 3 feet from the center line of

1 the KCS rail line. But that sheeting itself would
2 have a width beyond just that one point. It would
3 encompass -- you know, your estimate was 6 to 8,
4 maybe more, maybe less; but it would encompass more
5 than just that .3 feet from the center line; correct?

6 A You lost me on the .3 foot. I'm lost on
7 the .3 foot.

8 Q The 12 feet. I'm sorry.

9 A Just go back a minute.

10 3.66 meters calculates to be 12 feet.

11 Okay? So the back -- you're asking for the back edge
12 of the sheeting, possibly?

13 Q Correct.

14 A If it's 6- to 8-inches wide, the back edge
15 would be 12 feet, 6 to 12 foot, 8 inches from center
16 line to track.

17 Q And, obviously, that range depends on the
18 width of the actual sheeting; right?

19 A That's correct. Correct.

20 Q And then you also indicate that the
21 sheeting has a Z or an undulating aspect of it; is
22 that correct?

1 A It's angled. Yes, undulates it; correct.

2 MR. FOGARTY: Thank you.

3 ADMINISTRATIVE LAW JUDGE JACKSON: Mr. Shumate,

4 any questions?

5 MR. SHUMATE: No.

6 ADMINISTRATIVE LAW JUDGE JACKSON:

7 Mr. VonDeBur.

8 MR. VONDEBUR: No, your Honor.

9 ADMINISTRATIVE LAW JUDGE JACKSON: IDOT?

10 MS. BUSHUR-HALLAM: I think -- well, one

11 question first.

12 CROSS-EXAMINATION

13 BY

14 MS. BUSHUR-HALLAM:

15 Q You've raised two concerns with the

16 drainage.

17 A Yes.

18 Q And the first one is with regards to

19 Class 1 railroads and the reinforced concrete pipes?

20 A Yes, ma'am.

21 Q And the separation of the pipes?

22 A Potential separation of the pipes.

1 Q Have we indicated in any of our subsequent
2 meetings that we were going to address that concern?

3 A It's never been raised.

4 Q Never raised that --

5 A Right. Just this week, I mentioned it to
6 Kansas City Southern.

7 Q Okay. And then is that what I understand
8 as well as to this other drainage issue about
9 grouting --

10 A Right.

11 Q -- that that's not been raised yet?

12 A Correct.

13 Q We're here for the first time today?

14 A Yes. Uh-huh.

15 Q Just in case I haven't been in all the
16 meetings?

17 A In my initial reviews, I missed that
18 drainage pipe that's going to be filled and I've
19 missed the raised question of restraint devices on
20 the seconds of our -- I've missed the discussion or
21 concern of the restraining devices between the
22 seconds of concrete pipe.

1 MS. BUSHUR-HALLAM: I think that's all.

2 Rick, do you have anything?

3 MR. KABAKER: No.

4 ADMINISTRATIVE LAW JUDGE JACKSON: Does KCS

5 have anything else to come before us today?

6 At the very end, I'm going to give you

7 a minute to talk about your statute. All right?

8 MR. JEFFERY: We have no other matters at this

9 point.

10 ADMINISTRATIVE LAW JUDGE JACKSON: Fiberoptic

11 cable, Mr. Fogarty, do you have any evidence to put

12 on today?

13 MR. FOGARTY: I did want to follow up with

14 Mr. Brown on his narrative of earlier, if I could

15 very briefly.

16 ADMINISTRATIVE LAW JUDGE JACKSON: Well, I

17 think we may get there. Certainly if not today,

18 after -- we're getting together again. But do you

19 have anything other than that?

20 MR. FOGARTY: I guess I would want to make a

21 general statement that MCI participated in the

22 meeting two weeks ago tomorrow. It has been

1 cooperatively working to try and move this project
2 forward. And in that vein, had its representatives
3 available in conducting potholing the past two days.

4 So we're here today on the fashion to
5 move this project forward. At the same time, it's
6 important that there's communication to MCI if the
7 plans are going to be revised and how that revision
8 impacts our cable.

9 ADMINISTRATIVE LAW JUDGE JACKSON: Now that you
10 are in the room, you are stuck as long as this case
11 lives. So you're with us.

12 Would you like the floor? Would like
13 to put Mr. Brown back on, or would you want to
14 wait --

15 MS. BUSHUR-HALLAM: I would like to wait.

16 ADMINISTRATIVE LAW JUDGE JACKSON: Okay. I'm
17 going to let you.

18 Given the fact that we have new
19 counsel -- although, we're holding everyone's feet to
20 the fire and we're going to get together sooner than
21 later, I'm going to grant her request to hold for
22 today with witness and come back with him.

1 And that will give you more time --
2 I'm speaking to Mr. Fogarty so the record is clear.
3 Now that you're with us and the fact that you were
4 there for the meetings on Monday and Tuesday to do
5 the potholing, I want you to -- so it will give you
6 time, too, to address your issues.

7 Any other testimonial evidence to come
8 before us today?

9 All right. Yes, I'm going to let --
10 because your counsel is up there, we have Mr. David
11 McKernan speaking in Springfield. Yes.

12 I'm going to give you a minute.

13 MR. MCKERNAN: As far as going back to the
14 concrete reenforced pipe, Union Pacific prefers to
15 and can do jack and bore up to a 60-inch diameter
16 steel pipe, which is what we utilized whenever we
17 have culvert grading concerns in which -- and I'm
18 told we can go up to 60 inch.

19 ADMINISTRATIVE LAW JUDGE JACKSON: Up on steel,
20 not corrugated.

21 MR. MCKERNAN: Not corrugated metal. Steel
22 pipe. And that's what we've been doing here of late

1 at least the projects that I'm involved with.

2 ADMINISTRATIVE LAW JUDGE JACKSON: All right.

3 MR. MCKERNAN: The only other thing I would
4 like to mention is, I guess this is Exhibit 1, the
5 drawing of which KCS presented their Design Nine.

6 I think we'll all agree that this
7 project has been going on for quite some time. And
8 what we're hearing and what's been kicked around now
9 with the new administration and the possibility of
10 high-speed rail coming through this area and making
11 the last connection from Springfield to St. Louis or
12 East St. Louis or wherever that termination point is
13 going to end, that I think it would be prudent to at
14 least think a little bit about the MSE walls being
15 installed to accommodate a new track for high speed
16 rail in the future.

17 ADMINISTRATIVE LAW JUDGE JACKSON: Is this on
18 the -- is this location on the old SPCSL Corp, Amtrak
19 line?

20 MR. MCKERNAN: That is correct.

21 ADMINISTRATIVE LAW JUDGE JACKSON: It's good to
22 know. Thank you.

1 MR. MCKERNAN: Thank you.

2 ADMINISTRATIVE LAW JUDGE JACKSON: All right.

3 MR. FOGARTY: Could I ask a question to

4 Mr. McKernan just based on what he said?

5 ADMINISTRATIVE LAW JUDGE JACKSON: Yeah.

6 MR. FOGARTY: Just one question. Was your

7 comment directed to the vertical retaining walls

8 being considered on both sides or only one side?

9 MR. MCKERNAN: Well --

10 THE COURT REPORTER: I'm sorry, sir, could you

11 please speak up.

12 ADMINISTRATIVE LAW JUDGE JACKSON: Here's the

13 speaker up here, Dave.

14 MR. MCKERNAN: I'm suggesting that they'll be

15 done on both sides there. It appears that on the

16 drawing that I'm looking at they're considering a

17 concrete slope wall where we would just assume to

18 have -- concrete slope walls tend to fail rather

19 quickly and then we wind up getting somebody else's

20 water, which cannot accommodate that.

21 I just noticed on the drawing that it

22 was on the one side here but it wasn't depicted over

1 here on our side. And all I'm saying is that it's
2 sounding as if the high-speed project is going to
3 happen.

4 ADMINISTRATIVE LAW JUDGE JACKSON: Beyond
5 25 years. But, I mean, it's good information. It
6 really is. It's been talked about for 20 already.
7 But that's good to know.

8 And I think you need to go out to
9 these meetings, too. If you have concerns like that,
10 you better be out there because that's where the
11 discussions began. I mean, not literally today, but
12 these days in this case it seems. So you should be
13 there.

14 Okay. Is that all right, Mr. Shumate?

15 MR. SHUMATE: Yes, your Honor. One question.
16 The pipe that's -- that they're talking about placing
17 underneath the right-of-way that would be made out of
18 reinforced concrete, what the diameter of that pipe?

19 ADMINISTRATIVE LAW JUDGE JACKSON: What's the
20 what?

21 MR. SHUMATE: Diameter.

22 ADMINISTRATIVE LAW JUDGE JACKSON: Whatever it

1 is, KCS has no objections to it so long as it's
2 Class 5, and there's additional discussion on what
3 goes on with the connections.

4 MR. SHUMATE: The reason I ask the question, I
5 think if I understood Mr. McKernan, his testimony was
6 that you can jack and bore a steel pipe that's
7 60 inches and then you don't have as much of a
8 connection problem, I don't believe. And it's also
9 probably more structurally sound for future potential
10 use.

11 ADMINISTRATIVE LAW JUDGE JACKSON: Well,
12 somebody has the plans to show that. So UP should
13 also.

14 MR. BROWN: It looks like one side is 3-foot --
15 approximately 3-foot diameter. The other is
16 approximately 4 feet.

17 ADMINISTRATIVE LAW JUDGE JACKSON: And we have
18 36 to 48 inches below 60.

19 All right?

20 MR. SHUMATE: So that would be something for
21 the engineers to consider as Mr. McKernan raised.

22 ADMINISTRATIVE LAW JUDGE JACKSON: UP needs to

1 be out there when everybody is meeting. That's what
2 needs to happen.

3 All right. Mr. Jeffery --

4 MR. JEFFERY: Yes, sir.

5 ADMINISTRATIVE LAW JUDGE JACKSON: -- just for
6 the record, Mr. Fogarty gave me a copy of 220 ILCS
7 50, slash, 2.6. I believe the Tolerance Zone, 2.7.
8 Is that your statute you mentioned when we started
9 today?

10 MR. JEFFERY: Yeah. Actually, it's in 220
11 Illinois ILCS. I think it's Chapter 50.

12 ADMINISTRATIVE LAW JUDGE JACKSON: Didn't I say
13 that? 50, slash, 2.6, right.

14 MR. FOGARTY: And that's one statute, but
15 that's one statute out of the chapter.

16 ADMINISTRATIVE LAW JUDGE JACKSON: Right.
17 Well, I'll take a look at that. I'm going to ask you
18 something but I'll give you the floor to speak to it
19 if you want to today. Otherwise, we're together one
20 more time.

21 To me, this is the definition of
22 Tolerance Zone. There is no proscription in this

1 that any construction can take place or cannot take
2 place within 4 feet of the tolerance zone. In fact,
3 it says: Excavation within the tolerance zone, which
4 is defined as a strip of land 3 feet wide, et cetera,
5 et cetera, et cetera, requires extra care and
6 precaution. It does not say it's proscribed.

7 So I'll let you speak to that today or
8 when we get together again.

9 MR. JEFFERY: We reserve the right to address
10 that.

11 ADMINISTRATIVE LAW JUDGE JACKSON: All right.

12 MR. JEFFERY: And, again, in the context of the
13 other provisions in that chapter.

14 ADMINISTRATIVE LAW JUDGE JACKSON: Yeah. I'll
15 need to see those if there is a true proscription
16 that says you cannot. Here it says you can. You
17 just have to be extra careful.

18 All right. Any additional evidence to
19 come before us today?

20 Oh, you wanted to make another
21 statement?

22 MR. FOGARTY: We came here today because the

1 meeting was scheduled, but we could offer -- we could
2 make an offer of proof about the fiberoptic cable and
3 the fact that it carries Federal and Department of
4 Defense traffic and other FAA and 911 information.
5 So it's a vital communication way, not only
6 proprietary standpoint but also from the public
7 interest. And --

8 ADMINISTRATIVE LAW JUDGE JACKSON: I don't want
9 an offer of proof. I want evidence. And you're
10 going to get a chance to bring it in.

11 We've also been told, for your
12 information, Mr. Fogarty, that when we were
13 discussing the possibility of moving the fiberoptics,
14 as I see from KCS Exhibit No. 12, the fiberoptics,
15 Sprint is separate from MCI/Verizon. We were told
16 that these lines -- and at the time, I thought they
17 were all together -- cannot handle one more splice.

18 And that it would take an additional
19 brand-new ten miles, or whatever the heck it was, of
20 fiberoptics because they won't handle one more
21 splice.

22 Well, I want hard evidence of that

1 too. If that's the case, you know, like I said,
2 you're here with us. You're stuck. If MCI, Sprint,
3 Verizon, any of the cable companies have evidence
4 that this is Department of Defense sensitive,
5 et cetera, et cetera, I want to hear it out of the
6 mouth of the babe and no offer of proof.

7 If that's the only thing you can come
8 up with is an offer of proof, I'll have to accept it.

9 MR. FOGARTY: And I'm not sure where this
10 proceedings are, and so --

11 ADMINISTRATIVE LAW JUDGE JACKSON: They're
12 about done.

13 MR. FOGARTY: And, you know, when the
14 invitation was made, we attended the meetings a few
15 weeks ago. And when the request was made to expedite
16 potholing, we accommodated that. And when the
17 invitation -- or the suggestion was that we may want
18 to come to that, we've done that. And --

19 ADMINISTRATIVE LAW JUDGE JACKSON: Well, we do
20 appreciate that.

21 MR. FOGARTY: Our interest is the same with
22 IDOT, is that we don't want to have not only the

1 interruption of service, but more importantly, if the
2 plan that goes forward results in the line being cut,
3 I mean, not only -- then you still incur the cost of
4 replacing the four miles, and the interruption costs.

5 ADMINISTRATIVE LAW JUDGE JACKSON: Of course.

6 I need to know from IDOT -- this is
7 the 30th time I've mentioned it. There appears to be
8 a drop-dead date on losing funding. No matter what
9 my decision is, I need to know what that is. Or what
10 the Commission -- and the Commission, of course, has
11 to accept my recommendation.

12 That's all -- that's what I do, is
13 recommend to the Commissioners, and they buy it or
14 don't. I need to know what the drop-dead date is.

15 MS. BUSHUR-HALLAM: It is FY09 funding.

16 ADMINISTRATIVE LAW JUDGE JACKSON: Which is
17 federal --

18 MS. BUSHUR-HALLAM: Fiscal year.

19 ADMINISTRATIVE LAW JUDGE JACKSON: So end of
20 June?

21 MS. BUSHUR-HALLAM: End of June.

22 ADMINISTRATIVE LAW JUDGE JACKSON: July 1, full

1 order. What happens if. . .

2 MS. BUSHUR-HALLAM: We don't get the order?

3 ADMINISTRATIVE LAW JUDGE JACKSON: Well, if --

4 or if a party appeals the order. I don't know.

5 MS. BUSHUR-HALLAM: I mean, at this point, we

6 would then stand to lose the funding. We can't give

7 you a firm --

8 ADMINISTRATIVE LAW JUDGE JACKSON: How much

9 federal funding -- we've never talked numbers. How

10 much federal funding dollar-wise --

11 MS. BUSHUR-HALLAM: Could Mr. Kerns, Jeff Kerns

12 answer that question?

13 ADMINISTRATIVE LAW JUDGE JACKSON: Sure.

14 MR. JEFF KERNS: I can give you --

15 ADMINISTRATIVE LAW JUDGE JACKSON: Roughly.

16 2 million.

17 MR. JEFF KERNS: No. 7 million.

18 ADMINISTRATIVE LAW JUDGE JACKSON: 7 million?

19 All right. You guys better work faster.

20 April 29th. We have two months.

21 MS. BUSHUR-HALLAM: It is on the June letting

22 right now.

1 MR. KABAHER: Cindy, is June 30th really the
2 date, or is it really something like June 15th?
3 Because --
4 MS. BUSHUR-HALLAM: It's the letting date --
5 MR. KABAHER: The letting date is --
6 MS. BUSHUR-HALLAM: -- is June 12th.
7 ADMINISTRATIVE LAW JUDGE JACKSON: Is
8 June 12th?
9 MR. KABAHER: Right.
10 ADMINISTRATIVE LAW JUDGE JACKSON: Then you
11 better double faster.
12 Let's go off the record.
13 (Whereupon, a discussion
14 was had off the record.)
15 ADMINISTRATIVE LAW JUDGE JACKSON: All right.
16 Back on the record.
17 How long, IDOT, before we get
18 together?
19 MS. BUSHUR-HALLAM: We would still be ready to
20 go May 6th for a bench hearing.
21 ADMINISTRATIVE LAW JUDGE JACKSON: A bench?
22 MS. BUSHUR-HALLAM: Well, isn't that what the

1 last commitment was?

2 ADMINISTRATIVE LAW JUDGE JACKSON: Oh, no, no.
3 I have to get the -- if I had an agreed order today,
4 I can't do it.

5 No. I could have. I said I would.
6 If I walked in here and you had an agreed order, I
7 would put it on late. But as a general practice
8 rule, I have to have these orders to the
9 Commissioners 14 -- minimum of 14 days before the
10 bench session.

11 As chief judge ALJ, I have the
12 authority to put them on a week before. But I walked
13 in, we didn't have an agreed order; so it can't be on
14 the May 6th bench.

15 If we agreed, say, by today to
16 everything that needs to be in the order and then I
17 were to write it, it would take me two weeks -- I
18 have to have the Commissioners -- they have to have
19 two weeks to review these things unless I say, I'm
20 only going to give you a week because we have --
21 we're going to lose money. All right?

22 So you would have had to come in here

1 today with a completely agreed order for me to get it
2 on next Wednesdays bench. That's what I was talking
3 about. No. No questions.

4 So if we marked the record heard and
5 taken today and there's a dispute, the railroad
6 fights it, I'd have to do a proposed order and give
7 whoever on the losing side 14 days to file objections
8 to the proposed order.

9 And then the other side gets an
10 additional week to file objections before I can get
11 it to Commissioners, and then they have to have it
12 two weeks out. So without you coming in today with
13 an agreed order, it will not be on the May 6th bench.

14 Technically, the bench is next
15 Wednesday, May 6th. If you got me an agreed order by
16 next Wednesday, May 6th, I could have the Commission
17 have it on their agenda for the bench session
18 May 20th.

19 MS. BUSHUR-HALLAM: You would need the agreed
20 order by next Wednesday?

21 ADMINISTRATIVE LAW JUDGE JACKSON: Yes.

22 Now, that's to get it on the May 20th

1 bench. If you got me an agreed order by Wednesday --
2 actually Tuesday, May 12th, I would -- they allow me
3 to put it on a week out if I have a damn good reason
4 why. I'm not giving them two weeks. I'm only giving
5 them one.

6 So if you had an agreed order to me by
7 Tuesday, May 12th, I could still get it on the bench
8 May 20th. But here's the deal.

9 So here's our bench session schedule:
10 May 6th. Without having an agreed order today, we're
11 out of gas on that. Won't happen.

12 Next bench session Wednesday,
13 May 20th. Bench session after that, June 3. Next
14 session after that, June 24th. And, again, regular
15 protocol, if I have an agreed order two weeks out, I
16 have to get it to the Commissioners two weeks before
17 each bench.

18 But in this case, I will do the late
19 request -- late approval and do it a week away from
20 the bench.

21 Do you understand what I'm saying? If
22 it's agreed. If it's not, I have to give everybody

1 21 days to object and -- so there you have it.
2 Completely out of gas for those.
3 So you want to get together again in
4 two weeks?
5 MS. BUSHUR-HALLAM: Yes. We'll schedule that.
6 MR. KABAKER: Who are the parties that are
7 going to need to sign the agreed order? Will MCI,
8 now that they're involved in the discussion, also be
9 required to sign it?
10 ADMINISTRATIVE LAW JUDGE JACKSON: Well, you
11 don't sign it. I write the order.
12 MR. KABAKER: Well, I mean, agree to it.
13 ADMINISTRATIVE LAW JUDGE JACKSON: Yes. Sure.
14 They are now an intervenor. So although they're not
15 a party respondent, they're an intervenor. And the
16 intervenors are allowed to object. So they really
17 have the full rights and responsibilities of a party.
18 MR. KABAKER: Okay.
19 MR. McKERNAN: Your Honor, if I may, it appears
20 to me that the issue of the petition is strictly for
21 permission to construct these structures or this
22 structure. If we can construct and if we can put

1 together an agreed order basically grants IDOT
2 permission to construct the bridge and no one objects
3 to that, is that acceptable?

4 In other words, what I'm proposing is
5 an order be put together granting permission to
6 construct the bridges; and as long as everyone is
7 still in contact and communication with each other
8 and agrees that they're going to work out the finer
9 points of the actual construction, then we can enter
10 that order without great difficulty.

11 ADMINISTRATIVE LAW JUDGE JACKSON: Well, we
12 could. Typically, we refer to plans and specs or --
13 you know, whether they're of record or provided to so
14 and so. We do the cost distribution
15 responsibilities, and that's on the front side.

16 On the back side, what happens if the
17 Commission grants permission and then the railroad
18 jumps in and says -- you know, after permission has
19 been given to IDOT and says, Forget it. We don't
20 like that. The engineering, We don't. And they
21 don't have to have a reason.

22 Then boom, the project is done. I

1 prefer not to do it that way. Nice idea.

2 MR. McKERNAN: Just trying to reduce it to the
3 smallest common denominator.

4 ADMINISTRATIVE LAW JUDGE JACKSON: Or We're not
5 going to pay the MCI 500 grand and, boom, that
6 trashes the whole thing. Thank you.

7 All right. I need to run upstairs to
8 make sure this room is all right. I'm looking at the
9 week of May 11th. That's two weeks from now.

10 I'm thinking afternoon of May 12th
11 or -- I have a hearing set for -- oh, forget
12 May 13th. Or the 14th or 15th. Is that all right?

13 MR. FOGARTY: Any time?

14 ADMINISTRATIVE LAW JUDGE JACKSON: Anybody have
15 any violent objections to any of those dates? And
16 I'll go confirm them.

17 (Whereupon, a brief
18 recess was taken.)

19 ADMINISTRATIVE LAW JUDGE JACKSON: Back on the
20 record.

21 We are continued to Thursday,
22 May 14th, 2009, 2:00 o'clock in the afternoon in the

1 audio/video room Chicago/Springfield.

2 If I get an agreed order by Tuesday,

3 May 12th, I will put it on the Commission's bench

4 agenda for Wednesday, May 20th.

5 So when we get together on the 14th,

6 let's says worse case scenario I don't have an agreed

7 order, then that may be your last day to put on any

8 testimony of any kind. So be prepared, folks.

9 All right. That's it for today.

10 Thank you, everyone.

11 (Whereupon, further proceedings

12 in the above-entitled matter

13 was continued to May 14, 2009,

14 at 2:00 p.m.)

15

16

17

18

19

20

21

22